

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

3

HOUSE BILL 202
Committee Substitute Favorable 3/22/99
Senate Judiciary I Committee Substitute Adopted 6/30/99

Short Title: Amend Professional Corp. Act/AB.

(Public)

Sponsors:

Referred to:

March 2, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE PROFESSIONAL CORPORATION ACT TO PERMIT
3 CERTAIN EMPLOYEE RETIREMENT PLANS TO HOLD SECURITIES AS A
4 LICENSEE AND TO REVISE THE DEFINITION OF A FOREIGN
5 PROFESSIONAL CORPORATION THAT MAY BE AUTHORIZED TO DO
6 BUSINESS IN THIS STATE, AS RECOMMENDED BY THE GENERAL
7 STATUTES COMMISSION, TO ALLOW NONLICENSEES TO OWN UP TO
8 FORTY-NINE PERCENT OF THE SHARES OF A PROFESSIONAL
9 CORPORATION RENDERING CERTIFIED PUBLIC ACCOUNTANT
10 SERVICES, AND TO EXEMPT CERTIFIED PUBLIC ACCOUNTANTS WHO
11 ARE MEMBERS OF THE GENERAL ASSEMBLY FROM CONTINUING
12 PROFESSIONAL EDUCATION REQUIREMENTS.

13 The General Assembly of North Carolina enacts:

14 Section 1. G.S. 55B-6 reads as rewritten:

15 "**§ 55B-6. Capital stock.**

16 (a) Except as provided in ~~subsection (b),~~ subsections (a1) and (b) of this section, a
17 professional corporation may issue shares of its capital stock only to a licensee as defined
18 in G.S. 55B-2, and a shareholder may voluntarily transfer ~~such~~ shares of stock issued to

1 ~~him~~ the shareholder only to another ~~such~~ licensee. No share or shares of any stock of ~~such~~
2 a professional corporation shall be transferred upon the books of the corporation unless
3 the corporation has received a certification of the appropriate licensing board that the
4 transferee ~~of such shares~~ is a licensee. Provided, it shall be lawful in the case of
5 professional corporations rendering services as defined in Chapters 83A, 89A, 89C, and
6 89E, for ~~non-licensed~~ nonlicensed employees of ~~such~~ the corporation to own not more than
7 one-third of the total issued and outstanding shares of ~~such corporation~~ the corporation;
8 and provided further, with respect to a professional corporation rendering services as
9 defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee
10 retirement plan qualified under section 401 of the Internal Revenue Code of 1986, as
11 amended (or any successor section), is deemed for purposes of this section to be a
12 licensee if the trustee or trustees of the plan are licensees. Provided further, subject to any
13 additional conditions that the appropriate licensing board may by rule or order impose in
14 the public interest, it shall be lawful for individuals who are not licensees but who
15 perform professional services on behalf of a professional corporation in another
16 jurisdiction in which the corporation maintains an office, and who are duly licensed to
17 perform professional services under the laws of the other jurisdiction, to be shareholders
18 of the corporation so long as there is at least one shareholder who is a licensee as defined
19 in G.S. 55B-2, and the corporation renders its professional services in the State only
20 through those shareholders that are licensed in North Carolina. Upon the transfer of any
21 shares of such corporation to a ~~non-licensed~~ nonlicensed employee of such corporation,
22 the corporation shall inform the appropriate licensing board of the name and address of
23 the transferee and the number of shares issued to ~~such~~ the nonprofessional transferee. ~~Any~~
24 ~~share of stock of such corporation issued or transferred~~ The issuance or transfer of any share
25 of stock in violation of this section shall be null and is void. No shareholder of a
26 professional corporation shall enter into a voting trust agreement or any other type of
27 agreement vesting in another person the authority to exercise the voting power of any ~~or~~
28 ~~all of his stock~~ of the stock of a professional corporation.

29 (a1) Any person may own up to forty-nine percent of the stock of a professional
30 corporation rendering services under Chapter 93 of the General Statutes as long as:

- 31 (1) Licensees continue to own and control voting stock that represents at
32 least fifty-one percent (51%) of the votes entitled to be cast in the
33 election of directors of the professional corporation; and
34 (2) All licensees who perform professional services on behalf of the
35 corporation comply with Chapter 93 of the General Statutes and the
36 rules adopted thereunder.

37 (b) ~~A professional corporation formed pursuant to this Chapter may issue one~~
38 ~~hundred percent (100%) of its capital stock to another professional corporation in order~~
39 ~~for that corporation (the distributing corporation) to distribute the stock of the controlled~~
40 ~~corporation to one or more shareholders of the distributing corporation in accordance~~
41 ~~with section 355 of the Internal Revenue Code of 1986, as amended. The distributing~~
42 ~~corporation shall distribute the stock of the controlled corporation within 30 days after~~
43 ~~the stock was issued to the distributing corporation. A share of stock of the controlled~~

1 ~~corporation that has not been transferred to a licensee more than 30 days after it was~~
2 ~~issued to the distributing corporation is void.~~

3 (b) A professional corporation formed pursuant to this Chapter may issue one
4 hundred percent (100%) of its capital stock to another professional corporation in order
5 for that corporation (the distributing corporation) to distribute in accordance with section
6 355 of the Internal Revenue Code of 1986, as amended (or any succeeding section), the
7 stock of the controlled corporation to one or more shareholders of the distributing
8 corporation authorized under this section to hold the shares. The distributing corporation
9 shall distribute the stock of the controlled corporation within 30 days after the stock is
10 issued to the distributing corporation. A share of stock of the controlled corporation that
11 is not transferred in accordance with this subsection within 30 days after the share was
12 issued to the distributing corporation is void."

13 Section 2. G.S. 55B-16 reads as rewritten:

14 **"§ 55B-16. Foreign professional corporations.**

15 (a) A foreign professional corporation may apply for a certificate of authority to
16 transact business in this State pursuant to the provisions of this Chapter and Chapter 55 of
17 the General Statutes provided that:

- 18 (1) The corporation obtains a certificate of registration from the appropriate
19 licensing board or boards in this State;
- 20 (2) With respect to each professional service practiced through the
21 corporation in this State, at least one director and one officer shall be a
22 licensee of the licensing board which regulates the profession in this
23 State;
- 24 (3) Each officer, employee, and agent of the corporation who will provide
25 professional services to persons in this State shall be a licensee of the
26 appropriate licensing board in this State;
- 27 (4) The corporation shall be subject to the applicable rules and regulations
28 adopted by, and all the disciplinary powers of, the appropriate licensing
29 board or boards in this State;
- 30 (5) The corporation's activities in this State shall be limited as provided by
31 G.S. 55B-14; and
- 32 (6) The application for certificate of authority, in addition to the
33 requirements of G.S. 55-15-03, shall set forth the personal services to be
34 rendered by the foreign professional corporation and the individual or
35 individuals who will satisfy the requirements of G.S. 55B-16(a)(2) and
36 shall be accompanied by a certification by the appropriate licensing
37 board that each individual is a 'licensee' as defined in G.S. 55B-2(2) and
38 by additional certifications as may be required to establish that the
39 corporation is a 'foreign professional corporation' as defined in G.S.
40 55B-16(b).

41 (b) For purposes of this section, 'foreign professional corporation' means a
42 corporation for profit that:

- 43 (1) Is incorporated under a law other than the law of this State;

1 (2) Is incorporated for the ~~sole and specific~~ purpose of rendering professional
2 services of the type that if rendered in this State would require the
3 obtaining of a license from a licensing board pursuant to the statutory
4 provisions referred to in G.S. 55B-2(6); and

5 (3) Has as its shareholders only individuals who:

6 a. Qualify to hold shares of a corporation organized under this
7 Chapter;

8 b. Are licensed to provide professional services as defined in G.S.
9 55B-2(6) in a state in which the corporation is incorporated or is
10 authorized to transact business, provided that such professional
11 services are the same as the professional service rendered by the
12 corporation; ~~or~~

13 c. Are nonlicensed employees of a corporation rendering services
14 of the type defined in Chapters 83A, 89A, 89C, and 89E of the
15 General Statutes, provided that all such nonlicensed employees
16 own no more than one-third of the total issued and outstanding
17 shares of such corporation in the ~~aggregate~~-aggregate; or

18 d. With respect to a professional corporation rendering services
19 under Chapter 93 of the General Statutes, are persons who own
20 not more than forty-nine percent (49%) of the stock in the
21 professional corporation as long as:

22 1. Individuals who meet the requirements of sub-subdivision
23 a. or b. of this subdivision own and control voting stock
24 that represents at least fifty-one percent (51%) of the votes
25 entitled to be cast in the election of directors of the
26 professional corporation; and

27 2. All licensees who perform professional services on behalf
28 of the corporation in this State comply with Chapter 93 of
29 the General Statutes and the rules adopted thereunder.

30 (b1) With respect to a professional corporation rendering services as defined in
31 Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan
32 qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any
33 successor section), is deemed for purposes of this section to be an individual licensee if at
34 least one trustee of the plan is a licensee and all other trustees are licensees or are
35 individuals who are licensed under the laws of a state in which the corporation maintains
36 an office to perform at least one of the professional services, as defined in Chapter 83A,
37 89A, 89C, or 89E of the General Statutes, rendered by the corporation.

38 (c) A foreign professional corporation with a valid certificate ~~or~~ of authority has
39 the same but no greater rights and ~~has the same but no greater~~ privileges as, and is subject
40 to the same duties, restrictions, penalties, and liabilities now or later imposed on, a
41 domestic professional corporation of like character, except that the provisions of G.S.
42 55B-6 and G.S. 55B-7 ~~shall do not~~ apply."

43 Section 3. G.S. 93-12(8b) reads as rewritten:

1 "(8b) To formulate rules ~~and regulations~~ for the continuing professional
2 education of all persons holding the certificate of certified public
3 accountant, subject to the following provisions:

4 a. After January 1, 1983, any person desiring to obtain or renew a
5 certificate as a certified public accountant must offer evidence
6 satisfactory to the Board that ~~such~~the person has complied with
7 the continuing professional education requirement approved by
8 the Board. The Board may grant a conditional license for not
9 more than 12 months for persons who are being licensed for the
10 first time, or moving into North Carolina, or for other good
11 cause, in order that ~~such~~the person may comply with the
12 continuing professional education requirement.

13 b. The Board shall ~~promulgate rules and regulations~~ adopt rules for
14 the administration of the continuing professional education
15 requirement with a minimum number of hours of 20 and a
16 maximum number of hours of 40 per year, and the Board may
17 exempt persons who are retired or inactive from ~~said~~the
18 continuing professional education requirement. The Board may
19 also permit any certified public accountant to accumulate hours
20 of continuing professional education in any calendar year of as
21 much as two additional years annual requirement in advance of
22 or subsequent to the required calendar year.

23 c. Any applicant who offers satisfactory evidence on forms
24 promulgated by the Board that ~~he~~the applicant has participated
25 in a continuing professional education program of the type
26 required by the Board shall be deemed to have complied with this
27 ~~section~~subdivision.

28 d. All members of the General Assembly are exempt from the
29 continuing professional education requirement adopted by the
30 Board."

31 Section 4. This act is effective when it becomes law.